

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10579 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? -
2. To be referred to the Reporter or not? -
3. Whether Their Lordships wish to see the fair copy of the judgement? -
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? -
5. Whether it is to be circulated to the Civil Judge?
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DIPAK KUMAR H PATEL

Versus

STATE OF GUJARAT

Appearance:

MR MI HAVA for Petitioner
MR ST MEHTA, AGP, for Respondent.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 28/09/98

ORAL JUDGEMENT

By means of this petition, the petitioner has sought for quashing and setting aside the order of the State Government dated 23-6-1993 and the order of the competent authority dated 29-11-1986.

2. The competent authority/Deputy Collector, Surat by the order dated 29-11-1986 declared 4613-19-46 sq. mtr. as excess land of the petitioner holding that

Rekhaben has not produced her birth date certificate and she has not made her claim in writing in this property. Learned counsel for the petitioner submitted that the affidavit dated 27-11-1986 was filed by Dipakkumar wherein he has stated that his widow mother Kanchanben and his sisters Gitaben and Rekhaben are also entitled for their right and share in the property in dispute. They are also family members in the present system of Hindu Law. One share holder can retain the property of the other share holder. As such Rekhaben is also entitled to get her share and to that effect an application was filed by the petitioner and that was rejected by the prescribed authority only on the ground that she has not made her claim in writing. The learned counsel for the petitioner challenged the order of the Government of Gujarat/Revenue Division dated 23-6-1993 on the ground that the show cause notice for exercising revisional power u/s 34 of the Urban Land (Ceiling and Regulation) Act, 1976 was issued on 6-9-1990. Though the order of the competent authority was passed on 29-11-1986. The matter has been decided after about seven years from the decision of the competent authority. Therefore, the order of the Government is not sustainable as the powers u/s 34 of the said Act had been exercised after inordinate delay. Hence, that order is not sustainable in the eye of law. Secondly, the order of the Government is not based on any details and reasons for setting aside the order passed by the competent authority. From this order, it appears that the Government has not referred to and has not perused the same for determining the fact whether it was based on any evidence or not. The order of the competent authority is passed without assigning any sufficient reason and hence the same is not sustainable in the eye of law. On the facts the learned counsel for the petitioner submitted that the Government regarding the property no. 1 has made observation that there is no evidence relating to the factory, well, electric motor, manger, road margin, side margin etc. which was required under the law, not to be included in the holding of the petitioner. The prescribed authority in this respect has based its decision on the material evidence of Katargam which has been described in the judgment itself. Similarly, in respect of the land note in 7/12 there is a building construction over the land 658 sq. mtr., only on the basis of the some note there was some open land pertaining to survey no. 2 on page 131 the Government came to a conclusion that this land should have been included in the non-agricultural land and as vacant land. The competent authority based on survey report. But the Government has made observation that the surveyor report

was not authorised evidence. Hence, the competent authority was not proper in basing the same report. Total holding of the owner came to 15176-75 sq. mt. and one unit for which the owner was entitled to keep 1500 sq. mtr. land. After subtracting the holding of 1500 sq.mtr. the Government came to a conclusion that the petitioner is holding 13675-75 sq. as excess land which was to be taken by the Government. The competent authority after giving share to widow of Hasmukhbhai held the land of 4613-19-96 sq.mt. as excess land which was not considered to be proper and legal by the Government hence it was cancelled.

3. I have gone through the paper and record. Heard learned counsel for the parties. It appears that the Government has not gone through the papers filed by the parties before the competent authority and the Government has acted without perusing and considering the share of the parties and evidence on record and it was not sufficient for the Government to say that the order of the competent authority was not proper and hence liable to be set aside. No details and reasons have been recorded and the evidence produced before the competent authority have not been referred by the Government. As such, the matter has to be considered a fresh by the competent authority. As Rekhaben is also entitled for her share even though she has not claimed in writing. Being a member of the family she is also entitled to inherit the ancestral property.

4. Accordingly, the orders bearing No.ULC/3490/2035/3166/V3 dated 23-6-93 passed by the Government of Gujarat and the order dated 29-11-1986 of the Competent Officer/Deputy Collector, Surat in ULC/6(1)771/89/Katargam/U-1 are quashed and set aside and the matter is remanded back to the competent authority for decision a fresh after giving opportunity to the petitioner as well as any other affected person. The competent authority is further directed to proceed with the matter expeditiously and decide the matter in accordance with law a fresh preferably within three months, from presentation of a certified copy of this order.